

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JUAN POSADAS,

No. C 08-4341 MMC (PR)

Petitioner,

**ORDER DENYING PETITIONER'S  
MOTION FOR APPOINTMENT OF  
COUNSEL; GRANTING REQUEST  
FOR EXTENSION OF TIME TO FILE  
TRAVERSE**

v.

MICHAEL MARTEL, Warden,

Respondent.

**(Docket Nos. 10, 13, 15)**

On September 16, 2008, petitioner Juan Posadas, a California prisoner proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Thereafter, the Court directed respondent to show cause why a writ of habeas corpus should not be granted based on petitioner's cognizable claims. Respondent proceeded to file an answer to the petition and also filed an administrative motion under Civil Local Rule 3-12 to relate to petitioner's case another pending habeas action filed by petitioner's co-defendant, Vasquez v. Felker, No. C 08-5051 SI. By order filed October 26, 2009, the Court denied respondent's motion to relate the cases.

Now pending before the Court are two requests for appointment of counsel, the first filed October 13, 2009, by petitioner himself, and the second filed October 28, 2009, on petitioner's behalf by Tara Mulay ("Mulay"), a staff attorney with the First District Appellate Project, who was appointed by the Sixth District Court of Appeal to represent petitioner in his state court appeal and seeks appointment to represent petitioner herein.

Petitioner cites various grounds in support of his request. First, petitioner states that at the time of his conviction he was an informant for the Bureau of Narcotics Enforcement (“BNE”), which agency is part of the California Department of Justice (“DOJ”), Office of the Attorney General, the same office that represents respondent in the instant action. Petitioner further states that he continues to assist the DOJ with ongoing investigations and prosecutions. In the instant petition, petitioner calls into question certain actions of DOJ agents that he claims affected the outcome of his trial. Petitioner summarizes his position with respect to the above as follows: “Because this petition revolves around many complex questions to DOJ agents who are likely to side with their employer, and because their employer is representing respondent in this case, I feel my interests can better be represented by professional counsel.” (Request for Appt of Counsel at 3:15-18.) Additionally, petitioner asserts, he is entitled to the appointment of counsel because he is indigent, is “in no position to investigate crucial facts,” and is unfamiliar with case law and conducting legal research. (Id. at 6.)

As additional support for petitioner’s request is a declaration filed by Mulay, in which she asserts that she or other counsel should be appointed to represent petitioner because the adjudication of petitioner’s claims requires analysis of complex federal questions concerning (1) whether petitioner’s right to confrontation was violated by the prosecutor’s questioning of petitioner’s co-defendant, Vasquez, about a threat Vasquez allegedly made to the victim, which threat was then reported to the prosecution by BNE agents, (2) whether the trial court wrongly excluded evidence concerning the victim’s prior bad acts, and (3) whether defense counsel was ineffective for failing to present evidence of a 911 call made by the victim. Mulay further states that, because of her prior representation of petitioner on appeal in state court, she is already familiar with the underlying facts of the case and the applicable legal principles and is of the view that petitioner is unable to “adequately articulate and present his claims to this Court and respond to the state’s argument in pro se.” (See Mulay Decl. (attached to Application for Appt of Counsel, filed Oct. 26, 2009).)

The Sixth Amendment’s right to counsel does not apply in habeas actions. Knaubert

1 v. Goldsmith, 791 F.2d 722, 728 (9th Cir.), cert. denied, 479 U.S. 867 (1986). Pursuant to  
2 statute, however, a district court is authorized to appoint counsel to represent a habeas  
3 petitioner whenever “the court determines that the interests of justice so require and such  
4 person is financially unable to obtain representation.” See 18 U.S.C. § 3006A(a)(2)(B).  
5 Here, given the record presented to date, the Court finds appointment of counsel is not  
6 required. Specifically, petitioner’s claims have been adequately presented in the petition, and  
7 the arguments made in support of petitioner’s claims are further articulated in the briefs  
8 prepared by Mulay as petitioner’s state appellate counsel, and have been placed in context by  
9 the exhibits lodged by respondent in support of the answer, including the state trial  
10 transcripts, and the detailed opinion of the California Court of Appeal. Further, at this early  
11 stage of the proceedings, the Court is not in a position to determine whether an evidentiary  
12 hearing will be required. In sum, the interests of justice do not require appointment of  
13 counsel in the instant case at this time. Should the circumstances change materially at a later  
14 stage of the litigation, the Court will reconsider this decision sua sponte.

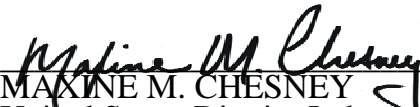
15 Accordingly, the requests for appointment of counsel (Docket Nos. 10 and 13) are  
16 hereby DENIED.

17 Also before the Court is petitioner’s request for an extension of time to file a traverse  
18 to the answer (Docket No. 15). Good cause appearing, the request for an extension is hereby  
19 GRANTED. Petitioner shall file his traverse on or before **January 15, 2010**. The petition  
20 will be deemed submitted for the Court’s review on the date the traverse is due.

21 This order terminates Docket Nos. 10, 13 and 15.

22 IT IS SO ORDERED.

23 DATED: December 7, 2009

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MAXINE M. CHESNEY  
25 United States District Judge  
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